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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
) MM Docket No. 99-292
Establishment of a Class A)
Television Service)

COMMENTS OF THE ALLIANCE FOR COMMUNITY MEDIA

To: The Commission

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COMMENTS OF THE ALLIANCE FOR COMMUNITY MEDIA

I. INTRODUCTION

The Alliance for Community Media (Alliance) is a public interest non-profit organization which represents the interests of community media centers throughout the United States. The Alliance's members represent approximately 5,000 cable access channels that provide Public, Educational and Governmental (PEG) cable access to their communities. Because of our commitment to protecting community access to cable television and our record of providing media access to minority, female and other disenfranchised communities, we are uniquely situated to comment on these proceedings. The Alliance submits these comments to support to the petition of the Community Broadcasters Association (CBA) with reservations.

PEG channels face serious threats to their stability from cable system operators who "slam"

PEG channels to higher channels to provide commercial broadcasting stations with a lower channel placement. Placement at the highest end of the spectrum undermines both the investment of the PEG channel in creating a brand association with their channel number as well as undermines the investment of the community in supporting PEG. Because it is the intent of the Commission to protect diversity in programming it is incumbent upon the Commission to prevent PEG Channel Slamming at every turn while expanding the much needed service that Low Power Television would provide.

II. THE ALLIANCE FOR COMMUNITY MEDIA SUPPORTS THE CREATION OF CLASS A SERVICE TO PRESERVE AND ENHANCE INCREASED BROADCAST OWNERSHIP DIVERSITY

The Alliance for Community has a twenty-four year public record of supporting increased broadcast ownership diversity, particularly for neglected populations such as minorities, the disabled and women. In this, we agree with the Community Broadcasters Association's (CBA) desire to secure a permanent spectrum home for low power television (LPTV) stations that provide a substantial amount of locally produced programming. Public, Educational and Governmental (PEG) access channels air a wide variety of non-commercial, locally produced programming to residents of specific ethnic, racial and interest communities, including programming in foreign languages. While LPTV, as commercial entities serve their local communities, PEG channels serve local communities as non-commercial, or public interest, entities. This creates a natural affinity between Alliance members and CBA members. Both serve under-served populations and provide localism, one in a commercial way and the other in an entirely non-commercial way.

III. CREATION OF CLASS A SERVICE IN ORDER TO CREATE A PERMANENT SPECTRUM HOME FOR LPTV CANNOT COME AT THE EXPENSE OF PEG CHANNEL PLACEMENT

As these comments are being written, communities around the country are experiencing the dubious practice of “PEG Channel Slamming,” (see attachment A). Cable operators claiming they must move PEG channels to comply with their “must carry” obligations are displacing PEG channels (typically pushing them very high up on the spectrum) in order to accommodate commercial programming. Some of these PEG channels have occupied their spectrum for almost two decades. Frequently, this PEG Channel Slamming is done with little to no notification (PEG operators arrive at work in the morning to calls from viewers asking why they were moved), little to no compensation for the move, no marketing support from the cable operators to inform the community of the move. For Educational access this can especially be damaging to distance-learning programs and enrollment when the Channel Slamming is done in the middle of a semester or course offering.

The Alliance for Community Media has yet to discover one instance in which the Channel Slamming was justified by “must carry” obligations. In a recent incident, the cable operator attempted to place a broadcast channel at 6 (which is currently occupied by the PEG channel), and to move the PEG channel to 15. The broadcast channel in question had never occupied channel 6 on the broadcast spectrum, but the PEG channel had occupied channel 6 since 1985. Clearly, this attempt by the cable operator strains the definition of channel positioning provided in the Communications Act of 1934. Indeed, it appears that certain cable operators are using the excuse of “must carry” to bury PEG channels at the far end of the spectrum, frequently beyond scrambled premium channels or pay-per-view channels (see Appendix).

Section 614 (b)(6) provides that “Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator.”

Nothing in Section 614 (b)(6) requires cable operators to displace PEG channels in favor of local commercial television. Instead, this practice is a willful attempt to strong-arm local franchising authorities and it displays contempt for the local public interest programming provided by PEG channels.

In the creation of Class A service television stations and the securing of permanent spectrum for these LPTV stations, the Alliance urges the Commission to make sure that PEG channel placement will be not be sacrificed. This is particularly crucial in light of the demonstrated penchant of cable operators to misinterpret “must carry” obligations. If the Commission inadvertently signals to cable operators that LPTV placement is more important than PEG placement, the Alliance believes it will prompt even more destructive instances of Channel Slamming by cable operators.

In response to the Commission’s request for comment on the “earlier user” provisions for protecting cable television and the other services listed in Section 74.703(d), and the Commission’s desire to add “earlier used” to the lexicon, the Alliance notes that much of the Channel Slamming mentioned above has happened in the last year or so. We urge the Commission to include in its

definition the length of time a channel was designated PEG before it was moved. For example, in Fort Wayne, Indiana, the PEG channel had resided at 15 since 1981 and was slammed to 55 six months ago. While the Commission may not be able to ameliorate this situation as it currently stands, if an LPTV station is given preferential treatment for channel placement based on where the LPTV station resided on broadcast for a few years, the PEG station in Fort Wayne may be slammed again because it has only occupied its new position for six months. We want PEG channel positions to carry “grandfathering” rights in decisions on channel placement. In other words, the PEG operation in Fort Wayne would be credited with its full term of service (18 years) not just six months.

If this or some other kind of protection for PEG channels is not included in the LPTV rules, PEG channels will be bounced all over the spectrum.

This continuous slamming of PEG channels carries extraordinary costs to the PEG facility and to the public, which it serves. Creation of a Class A service should enhance the opportunities for serving the community, not limit or destroy them altogether.

**IV. THE POWER OF THE FRANCHISING AUTHORITY TO APPROVE OR DENY
PLACEMENT OF LPTV ON UNUSED PEG CHANNELS MUST BE CLEARLY EMPHASIZED
IN THE RULEMAKING IN ORDER TO AVOID CONFUSION**

Local franchising authorities are being told that PEG channels must be displaced in order for cable operators to comply with the federal provisions of “must carry.” This is not true in all instances. Section 614 (b)(6) of the Communications Act limits the channel position entitlement of must carry stations. We ask that the Commission make it very clear in any rule adopted that the power to approve

or deny placement of LPTV on currently unused PEG is granted to the franchising authority according to Section 614 (c)(2) and the franchising authority may deny such placement.

The Alliance for Community Media opposes any PEG channel capacity being turned over to any non-PEG entity for any reason whatsoever, even if that PEG channel capacity is currently not being used. This is a very important point. Reservation of channel capacity for the public interest is critical if only in anticipation of future unforeseen technological developments. This is analogous to land set-asides in a community. When a community purchases open land to provide for green space, it may not develop that green space for years dependent on many factors such as resources, population density or community need. PEG channel capacity is a valuable piece of real estate that has been set-aside for community use, not commercial purposes. If LPTV is allowed to occupy currently unused PEG channel capacity, it must do so only for a period of time that the channel is not needed for PEG purposes and LPTV must not be given rights to the channel in perpetuity.

The franchising authority must remain the final arbiter in these decisions and the Commission must not preempt or dilute the power of the franchising authority to deny placement.

V. THE COMMISSION SHOULD EXTEND TO PEG THE SAME RULES THAT WILL ALLOW LPTV TO SEEK REPLACEMENT CHANNELS BELOW 60 WHEN THEY HAVE BEEN REALLOCATED, DUE TO DIGITAL EXPANSION OR THE ADDITION OF MUST CARRY CHANNELS

The intent of the Commission to protect and promote diversity of programming, provide opportunities in broadcasting and management for minorities, women and other under-served communities by creating Class A service is laudable and this same spirit of intent must be applied to

PEG. More than any other television medium today, PEG serves communities that have no voice in the mainstream or the commercial media. PEG serves disenfranchised and different languaged communities far beyond any other cable programming provider, full or low power broadcast entity or even PBS.

For that reason, it is doubly important that the Commission apply to PEG the same rules that allow LPTV stations to seek replacement channels below 60 when they are reallocated due to digital expansion or the addition of “must carry” channels. If the Commission applies the below 60 rules to LPTV alone, PEG channel displacement will inevitably occur. To favor LPTV at the expense of PEG is unconscionable.

Additionally, LPTV stations currently on channels 60-69 that file displacement relief applications for a channel below 60 should not be permitted to displace a PEG channel.

VI. CONCLUSION

The Alliance for Community Media supports the arguments of the Community Broadcasters Association in petitioning for the creation of a dependable LPTV service and recognizes that this service will enhance both diversity in programming as well as increased minority ownership of broadcast stations. However, PEG stations already have been harmed by broadcasters “must carry” rationalizations for PEG Channel Slamming and we believe that the Commission must be vigilant in maintaining support for PEG throughout the establishment of LTPV. We urge the Commission to adopt the CBA’s comments and to create LPTV service without creating rules that would allow for greater PEG Channel Slamming.

Respectfully Submitted

A handwritten signature in cursive script, reading "Bunnie Riedel".

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Appendix A

Channel Slamming

Prepared by Alliance for Community Media

“Channel Slamming” of Public, Educational and Governmental (PEG) access channels is increasing around the country. Channel Slamming is when a PEG channel is summarily moved from its position to another position (usually much higher in the spectrum) with little to no notice, regard for years of channel occupancy, compensation, marketing assistance, etc.

Recently, Channel Slamming has been attributed to “must carry” obligations. It is our contention that to treat these public interest channels as less important or more disposable than their commercial counterparts is inexcusable.

Below are examples of Channel Slamming that have happened around the country. These comments are presented as they were sent to the Alliance and have not been edited.

Acadiana Open Channel

Lafayette, Louisiana

One day in mid May, I came to work and got a phone call from a viewer, “How come you're moving from channel 58 and where are you going?” was the question.

My answer was "What are you talking about, we're not moving!?"

Of course we were moving, it's just that no one told us about it before a new cable line-up sheet was mailed to the 60K+ subscribers. On that sheet it showed that MTV was in our former position (58) but we were not mentioned at all.

After a few phone calls I was informed that we'd be on channel 98. We were left off the new cable channel listing "by mistake"

Channel 98 was placed into operation about 10 years ago when MTV was too controversial for our community. MTV was put "where no one can accidentally find it" on 98. BTW there are no operating channels above 60 in our community. We received no compensation, no promotional help, nothing. Of course it hurt our viewership a great deal, we still haven't fully recovered.

The company in question was TCA--now Cox. Their motivation was to make space for "new and better channels", they added ESPN-2.

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Access Fort Wayne

Fort Wayne, Indiana

In Fort Wayne, we were slammed earlier this year.

Public access had occupied Channel 10 since 1981. Viewer identification with that channel was high -- in one recent survey, 83% of viewers could identify public access with channel 10.

We were slammed to channel 55, exactly half-way "around the dial" from our former position, the farthest slot possible for anyone surfing the channels. It also caused us an extra problem with identity since 55 is the broadcast channel occupied by the local FOX affiliate, which everyone knows simply as Channel 55.

We received almost no warning. In June, we were asked to a meeting to discuss a proposed channel lineup. Just before the meeting we discovered that literature promoting the lineup had already been printed and was being distributed. When we protested, we were told there was no room for discussion. They also threatened to use their staff to flood our governing board with complaints about our operation if we dared to protest their action.

We received little compensation. The cable operator ran a number of commercial announcements of the new lineup in which the change of the access channels was buried under their announcement and sales pitch. They also did some bill inserts, which were likewise multipurpose

They promised us funds to repaint the logo, get new t-shirts, etc. but as of November 9, we haven't seen any money.

We were given no reason for the slam, other than it was their cable system and they would do with it what they wanted. They wanted to bundle like channels together. Our old channel was give over to E!.

The name of the operator? Who else? Comcast.

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KMVT Ch. 6, Mountain View Community TV

Mountain View

Mountain View Access, KMVT, is undergoing a fight to keep its channel 6 position. Our cable operator AT&T, has plans to change us to channel 15. Six other San Francisco Bay Area PEG Access channels are also threatened and some have already been moved. We have more information on the first page of our web site. The address is...www.mvkmvt.org

Ask your local affiliate station if channel placement isn't important! Yes, they are market driven-commercial stations, that's why channel allotment is so important- visibility! As a former cable and affiliate employee I've had this discussion many times. Here's what it boils down to in regard to PEG (my opinion)- a cable operator who would choose to move a "community service station" to ch. 99 of 100 and leave 12 PPV channels in mid to low tier- is basically saying to the community, shut up- sit down -give us your money! The channel allotment problem isn't a - glass half full or half empty issue - it's an issue of cable breaking the glass and pointing at you.

A wiser person than myself said, "actions speak louder than words", what is cable saying when the slam you into oblivion?

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Richfield, Utah

We were slammed here in Richfield Utah, from channel 37 to channel 96...no prior notice was given, and to this day half the people in town think we've been taken off the air...and many people don't have the ability to get the channel 96...The cable company is PEAK CABLE, and offshoot subsidiary of TCI...

.....

Access Sacramento

Sacramento, California

The history of channel number changing in Sacramento County is quite extensive. We have two channels on the cable system. Over 15 years we have moved from 47/63 to 17/18 and in 1997 to 73/74.

The higher numbers significantly change the number of viewers responses, training enrollments, memberships, etc. the org will have... old channel surfing habits die hard and few cable subscribers

venture higher than the low twenties. Interestingly the govt channel number remained at 14 and the second PBS channel number remained at 7... speaks volumes to the power of political muscle.

.....

Educational Access Television

Cable Channel 52

City College of San Francisco

We will be moved from Channel 52 to Channel 27, December 1st. I discovered this the last week in October. Our prime programs are Telecourses - so students will not have taken their finals when the channel switches.

.....

Eugene, Oregon

Back in late November 1997, TCI told the public/government and the educational access channels in Eugene, Oregon that they would move from 11 and 12 to 96 and 97 starting New Year's Eve or so. The local government jurisdictions and TCI received dozens or complaints immediately. TCI dismissed them as coming from a vocal minority unrepresentative of overall

subscriber opinion.

The local public access organization, which I was President of at the time, saw this as a direct assault on the viability of PEG access in Eugene, but unfortunately we fell within TCI's "vocal minority" definition mentioned above. We made the customary complaints at local government meetings, to the media, and to TCI. No luck.

The channel switch occurred according to schedule.

Then something nice happened. After the switch, the general public (bless 'em) took up the issue without any major push (or direction) from our public access organization. TCI suddenly began receiving dozens and dozens of complaints. A local newspaper columnist took up the issue. Local and county elected officials started banding together to fight the switch. The media responded with some well-researched stories. And TCI started to issue explanatory press releases.

(Honestly, our organization had little to do with the groundswell. There was just loads of anger against TCI about all sorts of things. In fact, we had a difficult time directing the parade towards a solution that would be beneficial to PEG.)

The debate against the switch had six main components.

1. Channels 96 and 97 were very prone to radio interference at the time thus reducing picture quality considerably. (We had a mostly 30 year old cable system at the time and only 38 available channels total.)

2. Low or fixed income subscribers who could not afford newer TVs or VCRs with cable tuners and who could not afford \$3.50 a month for a set-top cable converter box could therefore not receive PEG channels: a direct violation of the franchise. (TCI did waive the \$3.50 per month fee for some subscribers for a time as an attempt to eliminate this issue.)
3. The statement that the PEG channels were unimportant to the average subscriber began to fall apart under a load of continuous, spontaneous and specific complaints.
4. TCI seriously impacted Lane Community College's extensive telecourse programming by switching their popular courses to a channel filled with static that not all of its students could get. And they made this switch in the middle of a school year. And they didn't warn LCC enough in advance so the schedules for next term still said channel 12 instead of 97. And they didn't try and remedy the situation once the ball got rolling.
5. Cable subscribers as a whole were not effectively notified that their PEG channels were moving. (Subscribers were notified 30 days prior to the switch, but the notice on the TCI bill was easily overlooked by many people. TCI gave no money to the affected PEG programming providers to help them publicize the switch or rebuild station I.D.s.)
6. A large group of people didn't know they had channels 96, 97, 98 (Fox News Network), and 99 (C-Span) at all. Or else they didn't know how to program their VCRs to get them. Or else, their VCRs wouldn't register them because of their poor signal quality (especially 96 and 97).

I was present at a pivotal local government where these issues were raised against TCI by members of the general public, local elected officials, and the local access organization (a very rare triumvirate in Eugene!) To top it off, the LCC Board of Directors had voted to initiate legal proceedings against TCI to obtain restitution for financial damages to its telecourse program investment. Their Board President appeared in person to say so.

TCI backed down and returned the access channels back to 11 and 12 in May 1998. They placed a separate paper insert in the April bill to tell people of the switch. They put an ad in the paper. (They may have even given some money to LCC to cover class schedule printing costs.)

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Howard County, Maryland

I may have already told you that Comcast "slammed" our four PEG channels into the 70's! While they gave us the required warning (30 days), they had told us three months earlier that they were going to move the channels, but not the channel numbers we were going to end up on. Our community college runs telecourses, and needed to notify students well in advance. They also asked if it could be done either before the courses started, or during the Christmas break. We told Comcast this, and they seemed sympathetic. We also had the issue of a second cable provider (Mid-Atlantic Communications) in the western part of Howard County. Mid-Atlantic wasn't going to change the location of PEG channels out there, and we would have to

provide T swithches to convert the frequencies. We could not do this until we knew the frequencies involved, in other words, what channels we would be on.

Comcast gave us formal notice at the beginning of September (the beginning of the school year). We ordered the parts and were they would take two weeks longer than that to arrive. As a result, the PEG channels were off in the western county for three weeks! We were moved from channels 6, 8 and 15 to channels 70-73. The community college really had to scramble to get those students caught up, and the students were required to take a double dose of classes for the following three weeks. It was a real mess, in spite of the fact that we had alerted Comcast to the need for early notice, and pleaded with them to work with us. We never were told why they couldn't wait for a more appropriate time to make the change.

.....

Sterling Heights, Michigan

In 1998, without any notice, Comcast slammed educational access channels use by the two school districts serving the City of Sterling Heights, Michigan. The City reacted by adopting an ordinance requiring "good cause" and 90 days notice to move a educational access channel.

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Houston, Texas

In case you've not received ours, TCI has us on 86-96 and changes frequently with no notice of even a phone call afterwards. Money, ha! One of out four others does this also. Time Warner keeps us on the basic. We always walk in cold (with people calling), often without any notice that channel lineups are changing (much less ours) and it happens about every six months. Of course at 96 on your nightly lineup no one can even receive us.

.....

Sacramento, California (more)

Comcast Cable seems to have a common strategy to move community channels into the seventies... it happened in Sacramento in December 0f 1997. They paid \$1,000 for each channel impacted to cover costs of letterhead, channel promos etc. five channels of the seven community channels were impacted. Two education channels (formerly 21 & 22 moved to 71 &72) community tv (fomerly 17 & 18 moved to 73 & 74) and religious channel (20 now 75).

Interestingly, govt channel 14 and PBS cable channel 7 remained at the same numbers pointing out the "political clout" nature of channel movement. However, the local mangement of the Comcast system handled the transition relatively well, minimizing public protest.

The move has significantly impacted public awareness of the channels.. we estimate 30-40% fall off in class enrollments and public calls after the move. An audience survey we paid for showed that while the community was supportive of the content and mission of the local community channels, 80% of the subscribers never looked at numbers higher than the 50's no matter what the content. Old channel surfing habits die hard and surfing stops around channel 30.

We fought being kicked into "the attic" to no avail.... govt. officials stayed quiet because the govt channel remained unaffected except for one conservative county supervisor who told Comcast they were breaking their promise to the community. The chair of the local regulatory cable commission commented that channel number made no difference.... indicating that leaving the govt channel "as is" is a shrewd move.

.....

Fremont, California

I am the cable franchise administrator in Fremont, CA. Our vendor is AT&T. In October, AT&T notified me that they were moving the educational channel for Fremont Unified School District in 30 days. They did not notify the school district until I called them and asked them to do so. The school district was concerned that they had recently done a fair amount of promotion of their channel, including printing up brochures, etc., with the

old channel #. They were going to seek compensation from AT&T. I'm not sure whether they received any or not.

Also, AT&T is moving to a "universal lineup" in the San Francisco Bay Area, so many municipalities will see one or more of their PEG channels moved in the next three or four months, if they haven't already. AT&T gives 30-day notice of the move and hasn't offered any compensation up front that I'm aware of.